

**REMARKS**

Applicant added dependent claims 370-378 and amended claims 301 and 330 to further define Applicant's claimed invention.

In the Office Action, the Examiner allowed claims 173-199, 201-228, 231-233, 235-252, 255-272, 275-277, 279-293, 295-300, 309, 310, 313-315, 317-320, 323, and 337-369. The Examiner also objected to claims 304 and 333 as being dependent from a rejected base claim, but being allowable if rewritten in independent form including all of the limitations of any base claims.

The Examiner rejected claims 301-303, 305-308, 330-332, and 334-336 under 35 U.S.C. § 102(b) as being anticipated by EP 0526682 to Mittelmeier. Applicant respectfully traverses the Examiner's rejection. Independent claim 301 recites a spinal fusion implant formed of a mesh-like material other than bone and having a body adapted to permit the growth of bone "from adjacent vertebral body to adjacent vertebral body through said implant." Independent claim 330 recites a spinal fusion implant formed of a cancellous material other than bone, the cancellous material having a plurality of interstices "for permitting the growth of bone from adjacent vertebral body to adjacent vertebral body through said implant."

Mittelmeier teaches a vertebral body replacement. (See U.S. Patent No. 5,397,359 to Mittelmeier, col. 6, lines 34-49; Figs. 14 and 15). Applicant submits that the vertebral body replacement taught by Mittelmeier does not permit the growth of bone "from adjacent vertebral body to adjacent vertebral body through said implant" as recited in independent claims 301 and 330 because the height of the vertebral body replacement is too great for vertebral body to vertebral body bone growth. Further, the vertebral body replacements of Mittelmeier do not have upper and lower surfaces adapted to contact the adjacent vertebral bodies adjacent a disc space because one of the vertebral bodies adjacent the disc space must be taken out of the spine in order to accommodate the height of the vertebral body replacement.

Accordingly, Applicant submits that independent claims 301 and 330 are

allowable and that dependent claims 302, 303, 305-308, 331, 332, and 334-336 dependent from one of independent claims 301 and 330, or the claims dependent therefrom, are allowable at least due to their dependency from an allowable independent claim.

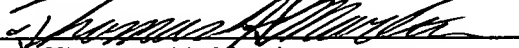
In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the amendments to the claims and preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-1066.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: June 8, 2004

By:   
Thomas H. Martin  
Registration No. 34,383

1557 Lake O'Pines Street, NE  
Hartville, Ohio 44632  
Telephone: (330) 877-0700  
Facsimile: (330) 877-2030